

In the Matter of )  
 )  
Consumer Protection in the Broadband Era ) WC Docket No. 05-271

**COMMENTS  
OF THE  
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF  
SMALL TELECOMMUNICATIONS COMPANIES**

## I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Federal Communications Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup> OPASTCO is a national trade association representing over 560 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

In addition to serving as incumbent local exchange carriers (ILECs), OPASTCO members are among the industry leaders in bringing advanced services to consumers in high-cost rural areas. OPASTCO estimates that over 90 percent of its members offer dial-up Internet access, and more than 85 percent offer broadband, using a variety of delivery mediums. Over 50 percent offer video services, primarily using either coaxial

<sup>1</sup> *Consumer Protection in the Broadband Era*, WC Docket No. 05-271, Notice of Proposed Rulemaking, FCC 05-150 (rel. Sept. 23, 2005) (NPRM).

cable or digital subscriber line (DSL) technology. Also, nearly one third operate competitive carriers, many of which offer data services.

The consumer protection regulations considered by the NPRM are inappropriate and unnecessary for the broadband Internet access services provided by rural ILECs, their subsidiaries, or affiliates. The widespread competition that currently exists in the rural broadband market provides ample incentive for rural ILEC providers of broadband Internet access services to meet the consumer protection goals of the Commission and the Telecommunications Act of 1996 (“the Act”). The imposition of formal regulations would only serve to hamper rural ILECs’ ability to provide quality service and extend the reach of broadband Internet access to greater numbers of consumers. By allowing the market for broadband Internet access services to grow unfettered by burdensome regulation, the Commission would advance its goal, and the goal of Congress,<sup>2</sup> of making advanced services available to all Americans, including those living in rural areas.

**II. THE MARKET FOR BROADBAND IN RURAL AREAS IS CHARACTERIZED BY WIDESPREAD COMPETITION, MAKING CONSUMER PROTECTION REGULATIONS FOR RURAL ILECS’ BROADBAND INTERNET ACCESS SERVICES UNNECESSARY AND COUNTERPRODUCTIVE TO FURTHER RURAL BROADBAND DEPLOYMENT**

As the Commission considers the consumer protection issues that are the focus of this proceeding, it must consider that the market for broadband Internet access services is very different from the market for traditional wireline voice services. Whereas rural telephone companies typically serve as the only provider of wireline voice services in their territories, these carriers often face considerable competition in the market for broadband Internet access services. A survey of OPASTCO members conducted nearly

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<sup>2</sup> 47 U.S.C. §§ 254(b)(2), 706.

two years ago indicated that over 75 percent offering broadband Internet access in their service areas faced at least one competitor, and 38 percent faced two or more.<sup>3</sup>

Competition for these services has undoubtedly intensified since that time and all indications are that competition will increase even further, as satellite services strengthen their marketing efforts in rural areas, wireless “3G” services continue to expand, and broadband over power line (BPL) technology becomes more economical.<sup>4</sup> This current and growing level of competition provides rural ILECs serving as broadband Internet access providers with a strong incentive to treat their customers well and meet all of the consumer protection goals of the Act without the imposition of formal regulations.

Furthermore, the fact that rural ILECs that offer broadband Internet access services also offer a wide variety of other communications services provides an additional impetus for them to meet their customers’ expectations with respect to all of the consumer protection goals established by the Act. This includes safeguarding their customers’ private information and providing truthful, understandable bills. In fact, terms of service agreements and privacy policies are the norm among OPASTCO members.

The Commission should also consider that rural ILECs already face significant hurdles in their efforts to bring advanced services, including broadband Internet access, to their customers. In contrast to larger broadband providers, rural ILECs must overcome factors such as sparse and dispersed populations, great distances between the customer

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<sup>3</sup> OPASTCO comments, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 04-54 (fil. May 10, 2004), p. 4.

<sup>4</sup> For example, WildBlue, a broadband Internet access service provider utilizing satellite technology, states on its website that it offers its services “in virtually every location across the contiguous United States.” <http://www.wildblue.com>.

and the central office switch, difficult terrain, and a lack of economies of scale. These challenges, which create higher costs per customer, are further compounded by rural ILECs' lack of access to the vast capital resources that are enjoyed by large carriers. With these challenges in mind, the Commission should avoid imposing unnecessary and potentially burdensome regulations on rural ILECs' broadband Internet access services. Doing so would divert scarce resources from the deployment and upgrade of facilities that are capable of providing broadband access to greater numbers of rural consumers without a corresponding benefit.

### **III. THE FCC SHOULD NOT APPLY TO RURAL ILECS' BROADBAND INTERNET ACCESS SERVICES FORMAL REGULATIONS FOR CPNI, TRUTH-IN-BILLING, NETWORK OUTAGE REPORTING, AND DISCONTINUANCE NOTIFICATION**

#### **A. CPNI**

The NPRM asks whether the Commission should invoke its Title I authority to regulate the use of customer proprietary network information (CPNI) by broadband Internet access service providers.<sup>5</sup> OPASTCO members are committed to protecting the privacy of their customers' proprietary network information. However, the imposition of CPNI rules on rural ILECs' broadband Internet access services is premature at this time. The broadband market is still developing, and there is no evidence that rural ILECs are inclined to misuse CPNI collected in the provision of broadband Internet access service. The desire for customer retention has resulted in the widespread use of terms of service agreements and privacy policies that most consumers find acceptable, and among OPASTCO members they are the norm. Combined with competition, this sort of industry self-regulation has been sufficient thus far to ensure that CPNI is treated with the

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<sup>5</sup> NPRM, ¶148-49.

appropriate sensitivity to consumers' privacy and according to expectations in the broadband market. Absent any clear pattern of wrongdoing by rural ILEC providers of broadband Internet access services, formal CPNI rules for these carriers are unnecessary and undesirable, as it would divert resources away from network upgrades and the provision of advanced services to greater numbers of rural consumers.

In the event that the Commission determines that CPNI rules are necessary for rural ILEC broadband providers, an "opt-out" approach should be used. This would allow consumers to indicate their preferences regarding CPNI-based marketing, an approach already used by many rural ILECs. Such an approach would balance the need for protection of customers' private information with the need of small entities to offer innovative and diverse service packages in response to consumer demand.<sup>6</sup>

### **B. Truth-in-Billing**

The NPRM inquires about the applicability of truth-in-billing rules for broadband Internet access service providers, including provisions related to "cramming."<sup>7</sup> The competitive nature of the market for broadband Internet access services incents rural carriers to provide their customers with bills that are clear, non-misleading, and in plain language. The Commission should consider that imposing formal truth-in-billing rules on rural ILEC providers of broadband Internet access services may require them to modify their billing systems, as many rural ILECs were forced to do as a result of the truth-in-billing rules that were adopted for telecommunications carriers. These billing

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<sup>6</sup> OPASTCO comments, *Implementation of the Telecommunications Act of 1996, Telecommunications Carriers Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, Response to Initial Regulatory Flexibility Analysis*, CC Docket No. 96-149 (fil. Nov. 1, 2001).

<sup>7</sup> NPRM, ¶¶152-53. The NPRM also inquires about "slamming," but this problem does not appear to be applicable to broadband Internet access services.

system modifications, in turn, would undoubtedly divert resources that otherwise would be devoted to the provision of advanced services to rural customers and extending the reach of these services to additional consumers. Competition, coupled with state consumer protection laws and federal and state truth-in-advertising laws, mitigates the need for formal billing rules that would likely impose significant burdens on rural ILEC broadband Internet access service providers.

### **C. Network Outage Reporting**

The NPRM also asks whether the Commission should apply its rules related to network outage reporting on broadband Internet access service providers.<sup>8</sup> Once more, additional regulatory burdens are not advisable at this time, particularly for rural ILEC providers and their subsidiaries. While the broadband market continues to develop, additional reporting requirements would impose more costs on providers and consumers in return for negligible benefits. If the Commission were to impose a network outage reporting requirement, it should take into account the challenges which rural ILECs face in the provision of broadband Internet access service. These conditions typically include high costs due to large geographic service areas with sparse populations, a limited customer base, relatively few employees, etc.

### **D. Section 214 Discontinuance**

There is no need to apply section 214 discontinuance-type requirements to rural ILEC providers of broadband Internet access service.<sup>9</sup> Rural ILECs offer a full array of communications services to the consumers in their service areas, with broadband Internet access being just one of those services. Rural ILECs are also deeply committed to and

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<sup>8</sup> *Id.*, ¶154.

<sup>9</sup> *Id.*, ¶¶155-56.

invested in the communities they serve, with many of the owners, managers, and other employees often living in those same communities. Thus, rural ILECs would certainly be compelled to provide adequate notification in the event of a discontinuance of broadband Internet access service, if for no other reason than to ensure that customers of their other services retained a positive image of the company. Furthermore, competition in the broadband market would provide most rural consumers with one or more alternative providers of broadband Internet access service, an additional factor mitigating the need for discontinuance notification requirements. If the Commission does decide that section 214 discontinuance-type requirements are necessary, the principle of competitive and technological neutrality requires that any notification rules be applied equally to all providers of broadband Internet access, regardless of technology.

#### **IV. THE NPRM'S INITIAL REGULATORY FLEXIBILITY ANALYSIS IS DEFICIENT**

The NPRM's Initial Regulatory Flexibility Analysis (IRFA) correctly recognizes that the adoption of new consumer protection regulations could possibly impose compliance burdens on small entities.<sup>10</sup> Although the NPRM broadly discusses various types of consumer protection regulations, the IRFA asks small entities to comment on the possible burden of new rules and to quantify their costs, without providing specific proposals of any kind.<sup>11</sup> Even if details were provided by either the NPRM or the IRFA, the Commission may not rely upon public comments to fulfill its obligations to consider the impacts of proposed regulations on small businesses.<sup>12</sup> In any event, should the

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<sup>10</sup> *Id.*, Appendix B, ¶78.

<sup>11</sup> *Id.*, ¶79.

<sup>12</sup> Reply Comments of the U.S. Small Business Administration Office of Advocacy, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 (fil. Jul. 22, 1999), pp. 7 – 8 (citations omitted).

Commission adopt any new rules for rural ILEC broadband Internet access service providers as a result of the NPRM, the Commission would first have to evaluate the disproportionate costs and burdens that may fall upon these carriers, and describe any significant alternative approaches that it has considered in reaching its proposed approach.

## **V. CONCLUSION**

Formal consumer protection rules are unnecessary and inappropriate for the broadband Internet access services provided by rural ILECs, their subsidiaries and affiliates. The widespread competition that currently exists in the rural broadband market serves as a powerful incentive for rural ILEC providers of broadband Internet access services to meet the consumer protection goals of the Act. The imposition of regulations, therefore, would only serve to hinder the achievement of Congress' and the Commission's goal of making advanced services available to all Americans. If the Commission decides that additional regulation is necessary, it must be done in such a way that minimizes the burden on rural ILECs, enabling them to continue to invest scarce resources in the provision of broadband Internet access service to increasing numbers of rural consumers.



Respectfully submitted,

**ORGANIZATION FOR THE PROMOTION  
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**Certificate of Service**

I, Brian Ford, hereby certify that copies of OPASTCO's comments were sent on this, the 17<sup>th</sup> day of January 2006, via electronic mail to those listed on the attached sheet.

By: /s/ Brian Ford  
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